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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,544	02/19/2004	Joanne Kaye	486.0043USU	3243
7590 10/18/2005			EXAMINER	
Charles N. J. Ruggiero, Esq. Ohlandt, Greeley, Ruggiero & Perle, L.L.P. 10th Floor One Landmark Square Stamford, CT 06901-2682			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/782,544

Applicant(s)

KAYE ET AL.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 and 36-40 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 14-16, 18, 25-29,34,36,39 and 40 rejected under 35 U.S.C. 102(b) as being anticipated by Alfandre (US 2,861,276).

Alfandre discloses a brassiere with a cushioned fastener system secured as claimed and including a first portion 14, a second portion 16 and wherein one of the first or second portions has at least one insert(64). (See Alfandre, figures 1,2,5;col.2, line 1 – col. 3, line 42). The brassiere fastener cushion structure is releasably secured by fasteners 20,18 to one of the pair of side panels (the left side panel) as broadly claimed and is fixedly secured to the brassiere. The cushion structure is a pouch (64 within layers 62 and 24). The cushion pouch has a first body (62) contacting layer and a second layer (24). The first and second layers have the first and second free ends, are mutually connectable and are fixedly connected by stitching. The insert is adhesively connected to the pouch as broadly claimed in that the insert 64 is sealed within the pouch by the heat welding of the plastic binding which when heated becomes an adhesive about the perimeter. The direct adhesion of the insert surface has not been claimed.(See Alfandre, col. 2, line1 – col. 3, line 42).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-22 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre (US 2,861,276) in view of Deal et al (US 6,231,423).

Alfandre discloses the invention substantially as claimed. However, Alfandre does not specifically disclose the padding 64 as being a silicone gel material padding. It is well known that silicone-padding material is widely used in garments as protective and body enhancing padding to cushion areas of the garment in addition to shoulder strap areas. Deal discloses silicone padding within film layers (43,44) to encase the loose gel material and with a border that is heat sealed(46). (See Deal et al(col 4, lines 6-22). Such heat sealed film enclosures with silicone gel therein are well known padding structures used in garment construction wherein the film and heat sealed lip edges enclose the gel therein to prevent gel leakage. (See Deal et al, col. 3, line 50 – col. 4, line 37).

Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre (US 2,861,276).

Alfandre discloses the invention substantially as claimed. However, Alfandre does not specifically disclose the specific brassiere fabrics as broadly claimed. The claimed fabrics are well known in brassiere construction. Accordingly it would d have

been obvious to one having ordinary skill in the art at the time the invention was made to construction the brassiere components of the selected materials in order to achieve a desired aesthetic effect in addition to gaining the benefits and performance characteristics of the selected materials as desired. Such a selection has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin , 125 USPQ 416.

Claims 23 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre in view of Greenberg(US 5,395,280).

Alfandre discloses the invention substantially as claimed. However, Alfandre does not specifically disclose the pocket as being openable to removable the pad as desired. Greenberg discloses a brassiere with a pocket 60 with a pad 62 therein which is removable as desired. Such pockets with removable pads are well known in order to place pads therein as desired. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pocket and padding construction of Alfandre with the teaching of Greenberg to construct the pocket which encases the padding as an openable pocket in order to selectively remove and replace the padding therein as desired. (See Greenberg, col. 2, lines 60-66 and figures 1-3).

***Claim Rejections - 35 USC § 103***

Claims 24 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfandre.

Alfandre discloses the invention substantially as claimed. However, the Alfandre pocket enclosure only includes one cushioning layer. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the padding material of multiple layers or inserts in order to increase the cushioning level of the padded area since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 17 is rejected under 35 USC 103(a) as being unpatentable over Klass(US5,157,789).

Alfandre discloses the fastener cushion pouch as claimed. However, Alfandre does not specifically disclose the pouch as having a releasably fastened opening. Klass discloses a pad/cushion pouch that includes a releasable fastener. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pouch of Alfandre to include a releasable fastener as disclosed by Klass in order to remove, replace or add padding material to the pouch as desired for more cushioning and comfort to the wearer.

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the cited references, alone or in combination disclose the removable pouch as claimed in claim 35.

### ***Response to Arguments***

Applicant's arguments filed 7-25-05 have been fully considered but they are not persuasive. In regard to the arguments on page 12 the Examiner disagrees that the element 64 is not an insert. Webster's New World Dictionary – Third College Edition, defines an insert as something that is put into or fits into something. The layer 64 is an insert that fits into the layers of the fastener that form the pouch or pocket. Applicant is arguing more than what has been claimed. The insert is not claimed as being free from or unconnected to any other layer or the pocket/pouch surrounding layers. The backing layer and the layer 62 with the binder form the pouch/pocket which is defined as two layers connected to form a space therebetween for the placement of items therein. The layers have free ends as broadly claimed prior to the binding being attached. The claim must claim the free ends as being free to provide the insertion of the insert therein and being boundless. Alfandre discloses two layers that are mutually connected by the binding forming an enclosure, pouch or pocket with the central layer inserted between the two outer layers thereby being an insert and the outer layers having free ends prior to the binding. The term "Mutual" is defined as being shared in common, related in some way, joined, fastened or connected. The layers of Alfandre are joined and

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fastened together by the binding and are therefore mutually connectable. The layers of Alfandre makeup a pouch with an insert therein. It is well known in garment manufacturing to cushion garment components with additional layers within pouches/pockets or pockets formed by two joined layers that are connected about three sides or more of their perimeter. It is also well known in protective garments to include cushioning material within pockets to protect certain areas of a wearer's body. Deal discloses such a garment portion with a cushioning material therein that both enhances a wearer's body and inherently cushions those areas. One of ordinary skill in the art would know to substitute known cushioning materials for one another such as using the material as seen in Deal to provide the cushioning properties found therein within the Alfandre garment instead of the foam material. Silicone padding material as disclosed by Deal is a well known cushioning material in garment manufacturing. Alfandre discloses a pocket structure for holding an insert therein as broadly claimed. Greenberg discloses a pocket with an insert therein that acts as a cushion on a wearer that is also removable as desired. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the insert removable as taught by Greenberg. Both Alfandre and Greenberg disclose components with inserts in pockets. The cushion layer of Alfandre is "inserted between the layers" and is therefore an "insert" as broadly claimed. Applicants' claims are extremely broad and do not clearly define the invention over the prior art. In conclusion, the cited prior art garments all disclose multiple layers forming pockets or pouches with a cushioning material insert therein. One of ordinary skill in the art at the time the invention was made



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would known to make the pouch with an opening for the removable insertion of the cushioning material therein as desired and to substitute any known cushioning material as desired to achieve a desired protective level. It is also well known to construct garments of known materials and that the selection of such materials is an obvious design choice especially in garment manufacturing. (See in re Leshin, 125 USPQ 416).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale  
Primary Examiner  
Art Unit 3765

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OIPE  
 JUL 25 2005  
 TRADEMARK OFFICE  
 approved  
 10.15.05

Replacement Sheet  
 US Serial No. 10/782,544  
 3/4

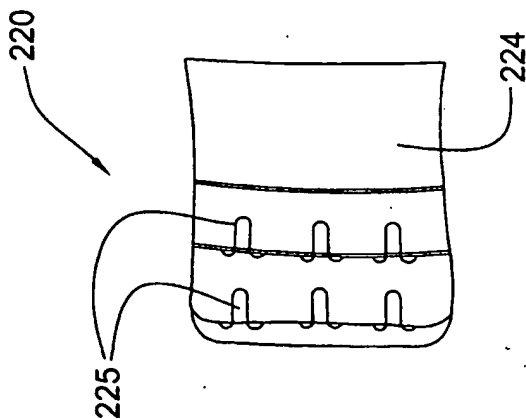


FIG. 3

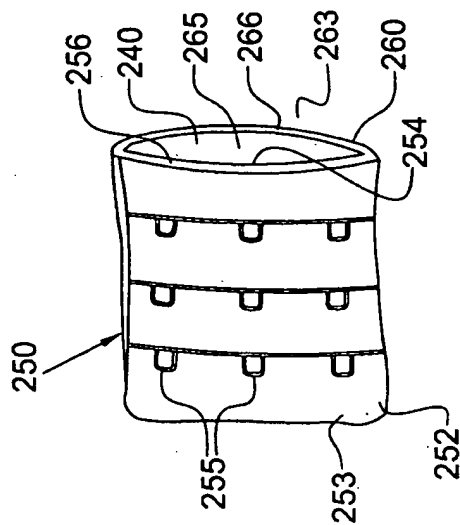


FIG. 4

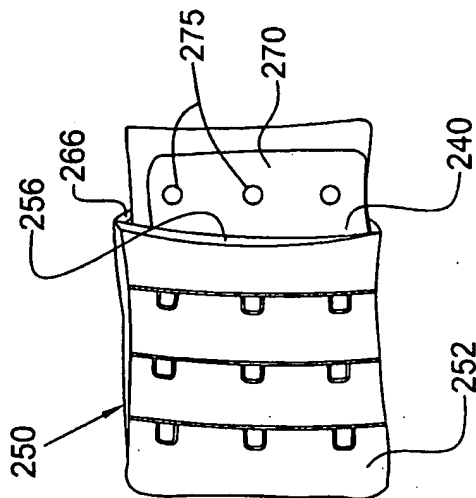


FIG. 5